

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. Chapter 151

RE: Juster Development Co. Land Use Permit
Amendment #1R0048-8-EB

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision, dated March 13, 1992, pertains to an appeal filed with the Environmental Board by Juster Development Co. (Juster) on January 18, 1991, from the decisions of the District #1 Environmental Commission dated March 19, and December 28, 1990. In those decisions, the District Commission concluded that the proposal submitted by Juster to satisfy Condition #29 of Land Use Permit #1R0048-8-EB issued by the Environmental Board on December 18, 1988, would not conform with Criteria 5 (traffic), 9(J) (public utilities) and 9(K) (public investments). Condition #29 required that prior to construction of the proposed expansion of the Rutland Mall, Juster submit for approval an alternative site plan incorporating a second emergency access, a new internal circulation pattern and other necessary improvements.

The Board concludes that the proposal submitted by Juster, as conditioned by this permit amendment, meets the requirements of Condition #29 of Land Use Permit #1R0048-8-EB and complies with Criteria 5, 9(J) and 9(K).

I. SUMMARY OF PROCEEDINGS

On December 18, 1988, The Environmental Board issued Land Use Permit #1R0048-8-EB (the Permit) authorizing the expansion of the Rutland Mall located on Route 4 in the Town of Rutland. Condition #29 of the Permit provides:

The Permittee shall not commence construction of the mall building above ground, nor finish the internal roadway and parking areas, until an alternate site plan has been approved by the District Commission which incorporates a second emergency access, a new internal circulation pattern and other necessary improvements to avoid potential conflicts.

On October 6, 1989, Juster filed an application to amend the Permit in which it attempted to satisfy the requirements of Condition #29. On March 19, 1990, the District Commission issued Findings of Fact, Conclusions of Law, and Order in which it denied Juster's request to construct an easterly roadway access to Route 4 for the purpose of satisfying this

Condition. The District Commission found that the proposal would not conform with Criteria 5, 9(J), and 9(K). Juster filed a Motion to Alter Decision. On December 28, 1990, the District Commission issued Reconsideration Findings of Fact, Conclusions of Law, and Order, again denying the application. Juster appealed the March 19 and December 28, 1990 decisions with respect to Criteria 5, 9(J) and 9(K).

An administrative hearing panel of the Board conducted a public hearing on July 2, 1991, with the following parties in attendance:

Juster Development Co. by Jon Readnour, Esq.
City of Rutland (the City) by John Hansen, Esq.
Town of Rutland Board of Selectman and Planning
Commission by Joseph Zingale
Vermont Agency of Transportation (VAOT) by Norman A.
Portalupi
Anne Vargas
Christopher Oakman

After taking a site visit and hearing testimony, the Panel recessed the matter pending submission of Proposed Findings of Fact and Conclusions of Law, review of the record and deliberation. The Panel deliberated on August 22, September 4, October 31 and December 27, 1991. A proposed decision was sent to the parties on January 9, 1992. The parties were provided an opportunity to file written objections and to present oral argument before the Board. Oral argument was not requested. Written responses to the proposed decision were filed. The Board reviewed the proposed decision, the written responses thereto, and the evidence and arguments presented. This matter is now ready for decision. To the extent any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied.

II. ISSUES

1. Whether compliance with the requirements of Condition #30 is at issue in this proceeding.
2. Whether the operation of the following intersections are at issue in this proceeding: 1) Route 4 and the Mall drive and 2) Route 4 and Stratton Road.
3. Whether the proposal by Juster to add the east site drive approximately 1,500 feet to the east of the existing mall drive and the proposed changes to the internal roadway plans meet the requirements of Condition #29 of the Permit.

4. Whether such proposal meets the requirements Of
10 V.S.A. § 6086(a)(5), 9(J) and 9(K).

III. FINDINGS OF FACT

1. Juster owns and operates the Rutland Mall (the Mall) located on the north side of U.S. Route 4¹ in the Town of **Rutland**, approximately 1,500 feet northeast of the boundary line between the City of **Rutland** and the Town of **Rutland**. The Mall covers approximately 600,000 square feet, including parking areas. This represents a gross leasable area of approximately 213,000 square feet and approximately 1,143 parking spaces.
2. Juster proposes to expand the Mall to create approximately 177,000 square feet of additional gross leasable area, 18,000 to 25,000 square feet of interior mall, and approximately 400,000 square feet for additional parking, service area and circulation (the Expansion). The Expansion will be located to the east of the existing Mall. The Expansion parking area will be located to the north and east of the Expansion shopping area.
3. U.S. Route 4 is the principally traveled east-west highway in the **Rutland** area. At present, access to and from the Mall is solely by way of the Mall drive which intersects with Route 4. At the intersection of the Mall drive and Route 4 there is a traffic signal, a left-turn lane for traffic entering the Mall from eastbound Route 4 and a right-turn lane for traffic entering the Mall from westbound Route 4.
4. The driveway for the **Eastwood** Animal Clinic is located across from the Mall driveway intersection on the south side of Route 4.
5. The Mall drive consists of four 11-foot lanes, two for entering traffic and two for exiting traffic. The distance from the main internal Mall intersection to the intersection of the Mall drive and Route 4 is approximately 300 feet. This provides a stacking capacity of 15 cars in each lane.
6. Approximately 60 feet from the intersection with Route 4, to the right of the entering lanes, there is a driveway that provides access to the parking area for the Panda Pavilion restaurant.

¹ U.S. Route 4 is also known as Woodstock Avenue in the vicinity of the Mall.

7. The main internal Mall intersection (the internal intersection) is a four-way unsignalized intersection. The Vermont National Bank is located at the southwest corner of the internal intersection; a Montgomery Ward store is located at the northeast corner.
 8. The signalized intersection of Stratton Road and Woodstock Avenue in the City of **Rutland** is approximately 2,500 feet west of the intersection of the Mall drive and Route 4.
 9. The plans for the Expansion are those for which the Environmental Board issued Land Use Permit #1R0048-8-EB in 1988, except for the creation of the easterly access and certain changes to the internal intersection which had not been proposed at the time the permit was issued. These changes have been proposed for the purpose of complying with Condition #29 of the Permit.
 10. The Board previously reviewed proposed modifications to the intersection of the Mall drive and Route 4. These included the following modifications that are also part of the current proposal:
 - a. Realignment of the existing Mall drive entrance ten feet to the west and relocation of the **Eastwood** Animal Clinic driveway so that the two driveways are directly opposite each other.
 - b. Widening of Route 4 to facilitate construction of a second left-turn lane into the Mall. The two **left-** hand turn lanes will extend back from the existing traffic light at the intersection for approximately 325 feet.
 - c. Creation of a separate left-turn lane for traffic exiting the Mall onto Route 4 east, and installation of a divisional island creating a separate **right-** turn lane for traffic exiting the Mall onto Route 4 west.
 - d. Modification of the timing of the traffic signal already in place at the intersection of Route 4 and Stratton Road.
 - e. Related pavement markings and signing.
 11. VAOT has reviewed Juster's plan for aligning the Mall drive with the driveway to the **Eastwood** Animal clinic. It has given conceptual approval to the modified design and associated traffic study. VAOT will not issue a highway permit until an Act 250 permit has been issued.
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- 1 2 . Describing and predicting traffic conditions is an inexact exercise which is susceptible to wide variations in assumptions, interpretations and opinions.

Intersection of Route 4 and the Mall Driveway

13. Traffic congestion is expressed in terms of "Level of Service" (LOS). The index for determining LOS at signalized intersections is average vehicle delay. LOS C is defined as average vehicle delays ranging from 15.1 to 25.0 seconds. LOS D is defined as average vehicle delays ranging from 25.1 to 40.0 seconds.
14. No pedestrian cycle for the traffic signal at the intersection of the Mall drive and Route 4 was included in the proposal that was previously considered by the Board. In Condition #30, the Board required the installation of a system that would permit pedestrians to interrupt the flow of traffic on Route 4.
15. The only change in the current proposal concerning the operation of the intersection of the Mall drive and Route 4 from the proposal considered by the Board in its previous decision concerning the operation of this intersection is the installation of the pedestrian phase of the signal. The pedestrian phase will be activated by pedestrians who wish to cross the intersection.
16. The installation of a pedestrian phase for the signal at this intersection was proposed to the District Commission for its review. The District Commission in its March 19, 1990 decision found that the main intersection, if improved in accordance with the original plans, would operate at LOS C. It further found that the frequent use of the pedestrian-actuated crosswalk would decrease the LOS since each pedestrian phase would require about 25 seconds to allow a person to walk across five lanes.
17. The District Commission, in its March 19, 1990 decision, concluded that, because of the uncertainty of the volumes of pedestrian activity at the intersection, the proposal for the pedestrian-actuated crosswalk at this intersection was "sufficient" as long as the District Commission reserves the right to require changes to the design of the intersection in the future if necessary as a result of the increased pedestrian use.
18. The current proposal before the Board for the pedestrian signal phase has been refined to allow for the concurrent crossing of pedestrians and left-turning traffic entering the Mall. The pedestrian crossing of Route 4 will be on
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the east side of the intersection. Eastbound through traffic will be stopped but left turns into the Mall from the two left-turn lanes will proceed during the pedestrian phase. This modification will improve the LOS at this intersection over that which would be experienced if all traffic was stopped during the pedestrian phase.

19. There is no evidence of increased pedestrian traffic at this intersection since the time of the District Commission's review of pedestrian traffic.
 20. The accident rate for the intersection of the Mall drive and Route 4 is 63.9 percent of the statewide average accident rate for similar type roadways and 29.6 percent of the critical accident rate used to identify high hazard locations. The intersection is not a high hazard location based on standards used by VAOT.
 21. The traffic analyses presented are based on December peak design hour traffic volume conditions. These conditions are expected to occur on the Friday before Christmas or other similar peak shopping periods.
 22. The 1990 peak December design hour traffic volume condition presented by Juster was based on a five-year planning horizon at the time the original application for an Act 250 permit for the Expansion was filed. Based on 1990 traffic conditions, after the Expansion the average vehicle delays at peak design hour conditions for the Mall drive/Route 4 intersection will be 24.07 seconds, which is borderline LOS C/D.
 23. At projected December 1997 peak hour conditions, average vehicle delays increase to 28.33 seconds, which is LOS D. The City estimates that the LOS would be D but with a 30.7 second delay. The City's projection for traffic volume includes traffic that would be generated by the construction of a new high school that may or may not take place.
 24. The two left-turn lanes for traffic entering the Mall drive from eastbound Route 4 will extend back from the entrance approximately 325 feet. In its December 1988 decision, the Board found that it is possible that traffic could back into the through lane of Route 4. With the proposed adjustments to the timing of the signal at this intersection, the revised pedestrian phase which permits continued left-turning traffic into the Mall from these two lanes, and the improvements proposed for the internal intersection, such an occurrence is unlikely.
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25. Traffic turning right into the Panda Pavilion drive must slow down in order to negotiate this turn. This may impede the free flow of traffic entering the Mall driveway from Route 4. Reconstruction of this driveway to provide a wider turning radius for right-turning vehicles will allow vehicles to make that turn without impeding the flow of traffic entering the Mall.
26. In its December, 1988 decision, with respect to Criterion #5, the Board found that the Expansion will create some increase in traffic at other road intersections in the City. It also found that improvements or adjustments to these other intersections will include modifying the phasing of the traffic signal systems in place to affect movement of traffic through intersections during peak periods.
27. In its December, 1988 decision, with respect to Criterion #9(J), the Board found that: 1) traffic generated by the Expansion will not in and of itself reduce the LOS on area roads or at area intersections to unacceptable levels; 2) the existing highway facilities in the Rutland region, in general, and Routes 4 and 7, specifically, are adequate to carry the additional traffic that will be generated by the Expansion; and 3) traffic-related services including roadway maintenance are adequate to meet any requirements generated by the Expansion and that the Expansion, as conditioned, has all necessary and supportive governmental and public utility services available and will not place an excessive or uneconomic demand on such facilities and services.
28. In its December 1988 decision, with respect to Criterion #9(K), the Board found the increased traffic levels associated with the Expansion do not decrease the LOS for area highways and intersections if certain signal timing changes are made.
29. The proposed installation of a pedestrian signal phase and changes to the internal intersection will not create any impacts to the intersection of Route 4 and Stratton road or other area highways or intersections under Criteria 5, 9(J) and 9(K) that were not previously considered by the Board.

Internal Intersection

30. The proposal calls for the internal intersection to be controlled by a stop sign at three of the intersection approaches. Vehicles approaching the internal intersection from Route 4 will not be required to stop. If entering vehicles were subject to a stop sign at the
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internal intersection, the entering lanes might back up into Route 4.

31. Juster proposes to provide for police officer control at the internal intersection when the intersection is at peak design hour conditions to insure a smooth flow of entering traffic and a satisfactory LOS for the other three approaches to the internal intersection. As an alternative, it proposes the installation of a traffic signal at the internal intersection which, if coordinated with the traffic signal at the intersection of the Mall drive and Route 4, would allow for a smooth flow of entering traffic while improving the LOS for the other three approaches to the intersection.
32. The use of a police officer will provide greater flexibility than the use of a traffic signal and is therefore preferable to a traffic signal at peak design hour conditions. Because of the difficulty of predicting when a traffic officer will be needed and the possibility that an officer would be needed for extended periods of time, a traffic signal should be installed to provide traffic control at times when a police officer is not at the site.
33. The traffic signal can be coordinated with the signal at the intersection of Route 4 and the Mall driveway to prevent back-up of entering vehicles into Route 4. The operation of the intersection can be monitored to insure smooth coordination of the traffic signals.
34. There are two inbound lanes between the intersection of Mall drive and Route 4 and the internal intersection. Juster proposes to construct a channelized right-turn lane. Traffic in the right lane will be required to proceed through the channelized right-turn lane. Traffic in the left lane will be allowed to proceed through the intersection or turn left.
35. Past the internal intersection there is a two-way traffic aisle that proceeds past Montgomery Ward to the *Martin's* Food Store located at the southwest corner of the Mall. Traffic approaching the internal intersection from this aisle with the intention of either proceeding through the internal inter-section or taking **a** left turn into the area of the Expansion may conflict with traffic entering the Mall and attempting to turn left at the internal intersection. This may impede the free flow of traffic entering from Route 4.

36. The creation of one-way traffic in the two aisles that proceed to **Martin's Food** store, as proposed in Juster Alternative A, will alleviate this conflict. One-way traffic in this corridor may inconvenience shoppers but will relieve congestion at the internal intersection.
37. Juster proposes to prohibit vehicles approaching the internal intersection from the southwest, in the traffic aisle adjacent to the Vermont National Bank, from proceeding through the intersection or making left turns at the intersection. This would force these vehicles to turn right at the intersection and exit the Mall.
38. Under the proposed Alternative A, traffic approaching the internal intersection on the aisle adjacent to the Vermont National Bank will be permitted to proceed through the intersection or make a right turn to exit the Mall.
39. The addition of the proposed second access to the east of the existing entrance will reduce the number of vehicles required to exit from the Expansion parking area through the internal intersection.
40. With the addition of the east access, the internal intersection will operate at LOS D under peak design hour conditions without either police officer control or a traffic light. Juster predicts that with police officer or traffic light control, during peak hour conditions operation of the intersection will improve to LOS C. This prediction is based on two-way traffic in the aisle proceeding past the Montgomery Ward store to Martin's Food Store.
41. The creation of one-way traffic in the aisle **proceeding** past the Montgomery Ward store to Martin's Food Store, as proposed in Alternative A, will improve the LOS at the internal intersection over what could be expected with either police officer or traffic signal control and **two-**way traffic in that aisle. Under Alternative A, the internal intersection should operate at LOS C or better.

East Access

42. Juster proposes to construct a second access to the Mall (the east access) approximately 1,450 feet to the east of the existing mall entrance. **The** east access drive will run in an easterly direction from the Expansion parking area through undeveloped property and turn right to intersect with Route 4.

43. At this location, Route 4 consists of three lanes, two eastbound and one westbound. The existing public right of way is approximately 62 feet wide at the proposed intersection. There is a mix of commercial and residential land use in the vicinity of the east access.
 44. The grade of Route 4 east of the intersection of the proposed east access and Route 4 is 3.4 percent for 150 feet, 4.5 percent for 250 feet, and 6.5 percent beginning at 400 feet east of the intersection.
 45. Existing posted speed limits on Route 4 are 50 m.p.h. for eastbound traffic and 50 m.p.h. for westbound traffic to a point just west of the proposed east access where the speed limit is reduced to 40 miles per hour.
 46. Juster proposes to have the speed limit reduced to 30 miles per hour for both eastbound and westbound traffic in the vicinity of the east access. Because Route 4 is a state highway, a speed limit reduction is contingent on approval of the Traffic Committee established pursuant to 23 V.S.A. § 1003. Such approval has not yet been granted.
 47. Reduction of the speed limit to 40 miles per hour for westbound traffic at a point east of the Post Road and Route 4 intersection where the east access first becomes visible to westbound vehicles will provide for a graduated speed reduction on this segment of Route 4. A flashing amber beacon and a flashing speed limit sign beacon at this location will provide westbound vehicles with adequate warning of the reduced speed limit.
 48. Juster proposes to install a flashing speed limit sign beacon and an advance warning sign of the shopping center turn lane ahead at the approach to the east access for traffic travelling west on Route 4.
 49. The reduction of the speed limit on Route 4 will not increase the possibility of rear-end collisions. Decreasing the speed limit should increase the safety of this highway at this location.
 50. A survey conducted by the City and submitted by Juster indicates that 97 percent of westbound traffic in the vicinity of the east access travel at speeds of less than 50 miles per hour and that approximately 50 percent of westbound vehicles are traveling at 40 miles per hour or less. It is reasonable to expect that if the speed limit is reduced along this section of Route 4, most drivers will obey the lower speed limit.
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51. For a considerable distance east of the proposed east access, westbound traffic on Route 4 has a clear view of the heavily travelled section of Route 4 that lies ahead and of the commercial and residential driveways on this section of Route 4.
 52. Driver sight distances are greater than 500 feet in each direction along this section of Route 4. Driver sight distances are more than adequate in each direction to provide safe stopping distances for both eastbound and westbound vehicles traveling at the present speed limit of 50 miles per hour.
 53. There will be a westbound deceleration lane for vehicles turning right into the east access. Juster proposes that the deceleration lane have a full width for approximately 50 feet and a taper for approximately 160 feet.
 54. According to B-71 standards issued by VAOT for commercial drives, including right-turn lanes, the length of the full width lane and the length of the taper are to be based upon the highway design speed. The design speed for Route 4 at this location is 60 miles per hour. For a highway design speed of 60 miles per hour, the length of the full width lane should be 225 feet and the length of the taper lane should be 200 feet according to the B-71 standards. There is adequate land available to provide for a longer deceleration lane and Juster had indicated that it would be willing to create a longer lane. A longer lane will provide an additional measure of safety for vehicles travelling west and entering the east access.
 55. Juster does not propose an acceleration lane for right-turning vehicles exiting at the east access. An acceleration lane would minimize interference by exiting vehicles with the flow of westbound traffic on Route 4.
 56. Juster proposes installing an overhead amber flashing beacon above the east access intersection. The beacon will flash amber for east and westbound traffic on Route 4 and will flash red for vehicles exiting the east access.
 57. The best available estimate of the number of vehicles that will exit the Mall by the east access indicates that **approximately** 323 vehicles per hour will use this exit at peak hour conditions. Of this number, 262 are **anticipated** to be right turns westbound and 61 left turns eastbound.
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58. The east access will have separate left-turn and right-turn exit lanes on the driveway approach to the intersection. Exiting traffic will be subject to stop sign control. The lane for left-turning vehicles should have stacking capacity for at least six vehicles in order not to block traffic turning right onto Route 4.
 59. Juster proposes to allow eastbound vehicles to enter the Mall by making left turns into the east access. Vehicles waiting to make a left turn across the westbound lane will block one of the eastbound lanes of Route 4. These entering vehicles would also conflict with vehicles attempting to make a left turn onto Route 4 at the east access. If eastbound vehicles are permitted to make a left turn across Route 4 west to enter the east access, the left-turn movement from the east access onto Route 4 will operate at LOS E.
 60. Vehicles travelling eastbound on Route 4 should be prohibited from entering the east access. A sign should be placed at this location indicating that left turns into the east access are prohibited for eastbound traffic. In order to make it physically impossible for eastbound vehicles to turn left into the east access, Juster should design the east access with the two exit lanes separated by a traffic island from a single curved channelized lane that will be used by vehicles entering the east access from westbound Route 4.
 61. With the prohibition of left turns into the east access, under peak December design hour conditions there will be adequate gaps in the Route 4 traffic to allow vehicles exiting the Mall at the east access to make a left turn onto Route 4 without unreasonable delay. Accident potential will therefore be minimized.
 62. Under peak design hour conditions, provided that eastbound vehicles on Route 4 are prohibited from making a left turn into the east access, exiting traffic turning right at the east access will operate at LOS C. Traffic turning left onto Route 4 will operate at LOS D.
 63. VAOT classifies the section of Route 4 from the Mall drive to Post Road as an "urban" road. It is more appropriate to compare the accident rate at the east access location to the accident rates for locations classified as "urban" rather than to the accident rates for locations classified as "rural." Roads classified as "rural" generally are beyond the influence of traffic signals and have a lower concentration of curb cuts than Route 4 in the vicinity of the Mall and the east access.
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64. The accident rate for the section of Route 4 between the Mall drive and Post Road, including the accidents which occur at both intersections, is approximately 81.7 percent of the statewide average accident rate for urban roads and approximately 46.1 percent of the Critical Accident Rate, which is used by VAOT to identify high hazard locations. This section of Route 4 is not a high hazard location based on standards used by VAOT.
 65. Juster does not propose to install a traffic signal at the east access intersection at this time. Warrants for consideration of traffic signalization are described in the Manual On Uniform Traffic Control Devices, 1988 edition. The traffic volumes at the east access intersection meet the minimum peak hour traffic warrant for a traffic signal. Satisfaction of a warrant or warrants is not in itself a justification for a signal according to the Manual of Uniform Traffic Control Devices.
 66. The need for a traffic signal at the east access can best be evaluated by requiring Juster to monitor the volumes of traffic at this location and submit this data, along with updated signal warrant analyses, to VAOT. A traffic signal at this location could operate safely provided that the speed limit is reduced as proposed.
 67. The east access satisfies the requirement of Condition #29 for an emergency access while relieving congestion at the primary internal intersection by providing a second access to and from the Mall.
 68. The east access will be located across Route 4 in the vicinity of the residential driveway of Joseph and Ann Vargas, which is on the southern side of Route 4. The east access may make it more difficult for the Vargases to enter and exit their driveway. Relocation of the Vargases' driveway may make it easier to **enter** and exit the driveway, particularly if a traffic signal is installed at this location.
 69. The use of the east access by traffic that may be generated by future development along the currently undeveloped land adjoining the east access drive would decrease the effectiveness of this access as a means of alleviating congestion at the internal intersection. It would also decrease the level of service at the east access intersection.
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IV. CONCLUSIONS OF LAW

A. Scope of this Appeal

1. Condition #30

The City contends that Condition #30 of the Board's permit is at issue in this appeal. Condition #30 provides:

The Permittee shall provide, prior to occupancy of the expansion, a crosswalk over Route 4 at the mall entrance, an extension of the sidewalk along the north side of Route 4 to connect the city sidewalk network with the mall entrance, an internal sidewalk to connect the walks listed above to the mall building, and a system that will permit pedestrians to interrupt the flow of traffic on Route 4. The design and location walkways must be approved by the District Commission prior to construction.

The scope of this appeal is as set forth in the Prehearing Conference Report and Order. The issues identified in that report concern Condition #29 only. The City did not cross-appeal with respect to the District Commission's Findings relating to Condition #30. It did not suggest that Condition #30 was at issue at the prehearing conference, nor did it challenge the statement of issues set forth in the Prehearing Conference Report and Order. The Board concludes that the District Commission's Findings **with respect** to Condition #30 were not appealed by the City or raised in a timely fashion and, for this reason, this Condition is not within the scope of this appeal.

The District Commission previously determined that Condition #30 has been met. In Finding #17 of the March decision, the District Commission found the crosswalk at the intersection of Route 4 and the Mall drive to be sufficient as long as it reserved the right to require changes in the future. In Finding #18, it found the sidewalk along the north side of Route 4 to be sufficient. In Finding #16 of the December decision, it approved the internal sidewalk. There is nothing in the current proposal that relates to Condition #29 that requires or suggests that the District Commission findings with respect to Condition #30 should be subject to review. Compliance with Condition #30 has been approved by the District Commission and is not within the scope of this proceeding.

This is not to say that the Board has disregarded all evidence regarding pedestrian traffic at the intersection of Route 4 and the Mall drive. The pedestrian phase of the traffic signal at that intersection is relevant to the overall operation of that intersection which is clearly at issue in this appeal. In this context, the Board has considered evidence related to the pedestrian phasing at this intersection to the extent such evidence is relevant to Condition #29.

2. Intersections of Route 4 and Mall drive and Route 4 and Stratton Road

Juster argues that the satisfactory operation of the main Mall intersection with Route 4 is not the subject of the appeal. The Board disagrees. Although the requirement of Condition #29 is for a site plan for a new internal intersection, it was in significant part because of the potential for that internal intersection to cause congestion at the Route 4 intersection that the Board found that a new traffic plan for the internal intersection was needed. The satisfactory operation of the intersection of Route 4 and the Mall drive is a crucial aspect of Condition #29 and any proposal related to the internal intersection and is therefore within the scope of this proceeding.

Juster also contends that the operation of the intersection of Stratton Road and Route 4 is not within the scope of this appeal. The Board, when it issued its permit, could only review what had been presented to it at that time. On the basis of the proposal before it, it concluded that there would be no impact to the Stratton Road and Route 4 intersection such that Criteria 5, 9(J) and 9(K) could not be satisfied. It also resolved any questions relating to the overall impact of traffic that will be generated by the Expansion on this and other intersections in the area.

The current proposal must be reviewed for any potential impacts to this intersection that were not previously considered by the Board. The operation of this intersection is therefore within the scope of this appeal, but only to the extent that there are impacts to this intersection created by the current proposal that were not considered in the Board's previous review. As stated in the Findings of Fact, the Board has concluded that there are no impacts to the Route 4 and Stratton Road intersection as a result of the current proposal that were not previously considered by the Board.

B. Criterion 5 - Traffic.

10 V.S.A. § 6086(a)(5) requires that, prior to issuing a permit, the Board find that the proposed project:

[w]ill not cause unreasonable congestion or unsafe conditions with respect to use of the highways and other means of transportation, existing or proposed.

The Board may not deny a permit under this Criterion, but may issue permit conditions to alleviate impacts created by a proposed project. 10 V.S.A. § 6087(b). The burden of proof under Criterion 5 is on any party opposing the project. 10 V.S.A. § 6088(b).

The Board has interpreted the phrase "other means of transportation" to include traffic conditions on project driveways and internal project roads. Re: Swain Development Corp., #340445-2-EB, Findings of Fact, Conclusions of Law, and Order at 34 (Aug. 10, 1990).

The Board's review of the traffic impacts of the proposed Expansion has focused on the creation of unsafe conditions or unreasonable congestions at three locations: 1) the intersection of the Mall drive and Route 4; 2) the internal intersection; and, 3) the intersection of the east access and Route 4.

1. Intersection of Mall drive and Route 4.

The Board concludes that none of the changes proposed by Juster in order to **comply** with Condition #29 will create unsafe conditions or unreasonable congestion at this intersection. There is no evidence that this intersection is unsafe. With respect to congestion, the Board previously concluded that the LOS at this intersection after the construction of the Expansion would be acceptable. None of the changes proposed by Juster in its current proposal will reduce the level of service previously approved by the Board.

The operation of the pedestrian phase, which was not previously approved by the Board, was approved by the District Commission and was not appealed. The current proposal, which incorporates the pedestrian phasing as well as additional improvements to the internal intersection beyond those that were previously considered by either the Board or the District Commission, will not adversely affect the operation of the Route 4/Mall driveway intersection. The additional conditions that have been imposed will insure the continued operation of this intersection at an acceptable level of service.

2. The internal intersection.

The current proposal for the internal intersection, as further conditioned by this decision, will not create unsafe conditions or unreasonable congestion on the highways. The operation of this intersection may be inconvenient for some visitors to the Mall. For example, some shoppers may be inconvenienced by the one-way traffic that will be required beyond the internal intersection. However, the Board's concern is not with convenience to Mall customers, but with safety and congestion. The creation of one-way traffic in this aisle will improve safety and reduce congestion at the internal intersection.

The requirements to install a traffic signal, to have a traffic officer present during peak periods, and the creation of one-way traffic to the north of the intersection will ensure that this intersection will operate at acceptable levels. The Board concludes that the operation of this intersection, as conditioned, meets the standards of this criterion.

3. The east access.

The proposed east access, as conditioned, will not create unsafe conditions or unreasonable congestion on Route 4. Vehicles making left-hand turns onto Route 4 when exiting the east access pose the greatest potential hazard at this location. The Board finds that the predicted left-turn LOS of D indicates that there will be adequate gaps in traffic travelling both east and west on Route 4 adequate to permit exiting vehicles to safely make a left-hand turn onto Route 4.

The City has provided evidence that, depending on the distribution of traffic between the east access and the Route 4/Mall drive access, left-hand turns will operate at LOS E or F in 1997. These projections are based on the City's view that the intersection of the Mall driveway and Route 4 will operate at LOS E and thereby cause vehicles to avoid that access and attempt to enter the Mall at the east access. Because the Board has concluded that the Mall drive/Route 4 intersection will operate at LOS D, and because it has prohibited eastbound vehicles from entering the Mall at the east access, it believes that the projections for LOS E at the east access are not reliable.

The Board does not find that the reduction of speed at the easterly approach to the east access will likely increase the number of rear-end collisions and other accidents along Route 4. It is apparent to vehicles traveling west on Route 4 at this location that they are approaching an urban area well

before the east access because of the unobstructed view of Route 4. The posting of a flashing amber light east of the east access will give further warning to westbound traffic of the need to reduce their speed.

The installation of a traffic signal at this site may be warranted in the future to facilitate left turns onto Route 4. Juster will be required to periodically monitor traffic volumes at the east access intersection at both average weekday and peak hour conditions and to submit this data, along with updated signal analyses, to VAOT. The Board concludes that if a traffic signal at this location becomes necessary it could operate safely.

With respect to the Vargases' driveway, the Board believes that the Vargases or subsequent owners of that property, should be granted the option of having their driveway moved to a location on Route 4 immediately opposite the east access. They may elect to have their driveway moved at Juster's expense, whether or not VAOT requires the installation of a traffic signal at this intersection, at any time during a five-year period commencing with the construction of the east access, provided that the property is used exclusively for residential purposes during that time.

C. Criterion 9(J) - Public Utility Services.

10 V.S.A. § 6086a(9)(J) provides that:

A permit will be granted for a development or subdivision whenever it is demonstrated that ... necessary supportive governmental and public utility facilities and services are available or will be available when the development is completed under a duly adopted capital program or plan, an excessive or uneconomic demand will not be placed on such facilities or services, and the provision of such facilities and services has been planned on the basis of a projection of reasonable population increase and economic growth.

The burden of proof on this issue is on Juster.

With respect to this Criterion, the Board concluded in its December, 1988 decision that the Expansion would not reduce the LOS on area roads to unacceptable levels, that existing highway facilities in the region were adequate to carry the additional traffic generated by the expansion, that roadway maintenance services were adequate to meet any

requirements generated by the expansion, and that the Expansion, as conditioned, has all necessary supporting governmental and public utility services available and will not place an excessive or uneconomic demand on such facilities or services.

The proposed changes to the internal intersection create no impacts that affect these conclusions. There will not be an uneconomic or excessive demand placed on area roads or intersections as a result of the changes proposed by Juster for the purpose of meeting Condition #29, as further conditioned by this decision.

The proposed east access, as conditioned, creates no impacts that affect these conclusions. The east access will not place an uneconomic or excessive demand on Route 4 or any other area roads or intersections. Neither will the installation of a traffic signal at this location place an uneconomic or excessive demand on Route 4, if it is determined to be necessary,

D. Criterion 9(K) - Impact on public facilities.

10 V.S.A. § 6086(9)(K) provides that:

A permit will be granted for the development or subdivision of lands adjacent to governmental and public utility facilities, services, and lands, including, but not limited to, highways, . . . when it is demonstrated that ... the development or subdivision will not unnecessarily or unreasonably endanger the public or quasi-public investment in facility, service or lands, or materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of or access to such facilities service or lands.

Under this criterion, the inquiry into traffic safety involves a higher threshold of material jeopardy or material interference than than considered under Criterion 5. Swain Development Corp., #340445-2-EB, Findings of Fact, Conclusions of Law, and Order at 34 (Aug. 10, 1990). The burden of proof on this issue is on Juster.

The intersection of the Mall driveway and Route 4 and the east access intersection with Route 4 involves an adjacent public highway. In its December 1988 decision, the Board concluded that the Expansion, as conditioned, would comply

with the requirements of this Criterion. The current proposal for the east access and additional changes to the internal intersection, as further conditioned by this decision, will not endanger the public's investment in Route 4.

Juster will build and pay for all the planned improvements that involve Route 4. Juster has proposed to install conduits at the time of construction of the east access to facilitate traffic light installation at this location if and when it becomes necessary. Juster will be required to pay for all costs associated with the installation of a traffic signal.

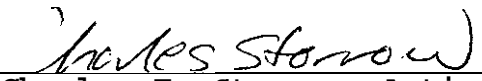
The Expansion, as conditioned by the Board permit issued in December, 1988, and as further conditioned by this decision, will not materially jeopardize or interfere with the function, efficiency, or safety of, or the public's use or enjoyment of, or access to Route 4. The Board concludes that Juster's proposal to satisfy Condition #29 of the Board permit, as further conditioned by this decision, meets the requirements of this Criterion.

V. ORDER

Land Use Permit Amendment #1R0048-8-(B)-EB is hereby issued. Jurisdiction over this matter is returned to the District #1 Environmental Commission.

Dated at Montpelier, Vermont, this 13th day of March, 1992.

ENVIRONMENTAL BOARD


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